

**SECTION B, REGULATIONS FOR THE APPOINTMENT OF  
COUNSEL AND GUARDIANS AD LITEM PURSUANT TO A  
PRISONER TRANSFER TREATY (18 U.S.C. § 4109 (a) (2) and (b))**

Section B. Regulations for the Appointment of Counsel and Guardians Ad Litem Pursuant to a Prisoner Transfer Treaty (18 U.S.C. § 4109(a)(2) and (b))

General Provisions

1. Introduction.

- a. Transfers to the United States. This regulation prescribes the procedures to be followed for the appointment and compensation of counsel and guardians ad litem in connection with transfers of financially eligible offenders to the United States from a foreign country with which the United States has a treaty for the execution of penal sentences, pursuant to section 4109(a)(2) and (b) of title 18, United States Code.
- b. Transfers from the United States. Appointment of counsel and guardians ad litem in connection with transfers from the United States to a foreign country, pursuant to section 4109(a)(1), (b) and (c) of title 18, United States Code, will be made in accordance with the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and the "Guidelines for the Administration of the Criminal Justice Act." Forms shown at Appendices D and E may be used for the appointment and compensation of guardians ad litem pursuant to section 4109(b) of title 18, United States Code, in connection with prisoner transfers from the United States. Otherwise, the appropriate CJA form should be used for the appointment and compensation of counsel pursuant to sections 4106A and 4109(a)(1) of title 18, United States Code.

2. Background. The United States of America has to date entered into treaties providing for the transfer of certain offenders for the execution of penal sentences with the following nations:

Bolivia*	Canada
France	Mexico
Panama*	Peru*
Thailand	Turkey*

The countries indicated with "\*" require that a request for transfer originate from that country's embassy in Washington, DC. Moreover, a prisoner requesting application should be advised that he or she should write to his or her embassy requesting that embassy officials draft a written request to the State Department. The State Department will notify the Office of Enforcement Operations, Criminal Division, United States Department of Justice, that a formal request for transfer has been received from the embassy.

In addition, the United States is a party to the multinational Convention on the Transfer of Sentenced Persons, which is in force with the following nations:

Austria	Bahamas
Belgium	Canada
Cyprus	Denmark
Finland	France
Germany	Greece
Italy	Luxembourg
Malta	Netherlands
Spain	Sweden
Switzerland	Turkey

United Kingdom and United Kingdom Territories:

Anguilla	British Indian Ocean Territory
Cayman Islands	British Virgin Islands
Ducie and Oeno Islands	Falkland Islands
Gibraltar	Henderson Island
Hong Kong	Isle of Man
Montserrat	Pitcairn
Sovereign Base areas of Akrotiri and Dhekelia in the Island of Cyprus	
St. Helena and St. Helena Dependencies	

The statute which implements such treaties appears at Chapter 306 of title 18, United States Code (§§ 4100 through 4115), a copy of which is included at Appendix A. Note: Although Canada, France and Turkey are parties to the multinational convention, prisoner transfers with respect to these countries generally are handled pursuant to the separate bilateral treaties between these countries and the United States.

Appointment of Counsel and Guardians ad litem in Prisoner Transfer Proceedings to the United States

1. General. Section 4108 of title 18, United States Code, provides for a proceeding to verify the consent of citizens or nationals of the United States to transfer to the United States for the execution of penal sentences imposed by foreign courts. The officer conducting the proceeding shall be a United States magistrate or a citizen designated by a judge of the United States. The verifying officer shall conduct the proceedings in the country in which the sentence was imposed in accordance with the guidelines to be included in the Procedures Manual for United States Magistrates, Volume IX, Guide to Judiciary Policies and Procedures. Additional guidance on the conduct of verification proceedings may be obtained from the Magistrate Judges Division, Administrative Office of the United States

Courts (area code 202-502-1830). The object of the proceedings is to ascertain that the offender is voluntarily consenting to transfer with knowledge of the consequences. If at the time of the transfer, the offender is under 18 years of age or deemed by the verifying officer to be incompetent, section 4100 of title 18, United States Code, provides that consent to the transfer must be given by a parent, guardian, guardian ad litem, or other appropriate official.

2. Right to Counsel and Guardians ad litem. Section 4109(a)(2) of title 18, United States Code, gives each offender the right to advice of counsel and to the appointment of counsel in proceedings to verify consent pursuant to section 4108 of title 18, United States Code, if he or she is financially unable to obtain an attorney. Counsel shall advise and assist offenders prior to and at the proceedings. Section 4109(b) of title 18, United States Code, provides for the appointment of guardians ad litem to act on behalf of financially eligible minor or incompetent offenders in proceedings to verify their consent for transfer to the United States from a foreign country. Appointment of guardians ad litem shall be independent of appointment of counsel under section 4109 of title 18, United States Code.
3. Factfinding. The determination of whether an offender is eligible for appointment of counsel or a guardian ad litem is a function to be performed by the verifying officer in accordance with these regulations. Offenders will normally provide information regarding their financial status on AO Form 273, shown at Appendix B. Completed forms should be provided to the designated verifying officer. Although the verifying officer may obtain additional information, factfinding should be done prior to the offender's appearance at the verification proceeding whenever practicable.
4. Standards for Eligibility. An offender is "financially eligible" for appointment of counsel or a guardian ad litem within the meaning of section 4109 if his or her net financial resources and income are insufficient to enable the offender to obtain qualified counsel or to provide for the compensation and travel expenses of a guardian ad litem. In determining whether such insufficiency exists, consideration should be given to the cost of providing the offender and his or her dependents with the necessities of life. The determination of eligibility should be made without regard to the financial ability of the offender's family unless the family indicates willingness and financial ability to retain counsel or provide a guardian ad litem promptly. Any doubts as to an offender's eligibility should be resolved in his or her favor.

5. Procedures for Appointment of Counsel and Guardians ad litem. Unless the offender waives representation by counsel, the verifying officer should determine if an offender is financially unable to obtain counsel. If consent for a transfer is to be given by a guardian ad litem in accordance with section 4100(b) of title 18, United States Code, the verifying officer should appoint a guardian ad litem for each financially eligible offender who is under 18 years of age or is mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer. Upon determining that an appointment should be made, the verifying officer should contact the Defender Services Division, Administrative Office of the United States Courts (area code 202-502-3030) to determine if a federal public or community defender, counsel from some other government agency, or a CJA private panel attorney is available for appointment as counsel or guardian ad litem. The verifying officer shall appoint the counsel or guardian ad litem designated by the Administrative Office.

Suggested forms for ordering the appointment of counsel and guardians ad litem pursuant to section 4109(a)(2) and (b) are shown at Appendices C and D, respectively.

#### Compensation and Reimbursement of Expenses

1. Federal Public and Community Defenders. Federal Public and Community Defenders appointed pursuant to section 4109(a)(2) and (b) of title 18, United States Code, will obtain travel authorization and advances from the Defender Services Division of the Administrative Office of the U.S. Courts (area code 202-502-3030), and submit travel vouchers, with supporting documentation, to their local clerk of court for reimbursement of expenses. A copy of the travel voucher should be forwarded to the Defender Services Division. The Administrative Office of the U.S. Courts will initiate action to obtain reimbursement of expenses from the Department of State pursuant to section 4109(a)(2) of title 18, United States Code.
2. Other Government Attorneys. Should an attorney from another government agency be appointed, the attorney's travel voucher shall be submitted to his or her own agency for payment in the usual manner. The attorney may obtain travel advances from his or her agency in accordance with standard practices. The agency concerned will thereafter initiate action to obtain reimbursement from the Department of State pursuant to section 4109(a)(2) of title 18, United States Code.

### 3. Private Panel Attorneys and Guardians ad Litem.

- a. Claim Forms. Private attorneys appointed pursuant to section 4109(a)(2) of title 18, United States Code, and guardians ad litem appointed pursuant to section 4109(b) of title 18, United States Code, will complete a claim for compensation and reimbursement of travel expenses, and obtain the signature of the verifying officer showing approval of the compensation and expenses. The form located at Appendix E may be used for this purpose.
- b. Hourly Rates. Private counsel and guardians ad litem may be compensated at rates not exceeding the hourly rates prescribed by subsection (d) of the CJA for time expended during the proceeding to verify consent and in advising or consulting with the offender, preparing to render advice, and in necessary travel, unless an alternative rate is applicable.
- c. Maximum Compensation. Maximum compensation for counsel or guardians ad litem appointed pursuant to section 4109(a)(2) or (b) of title 18, United States Code, respectively, is the CJA maximum for a misdemeanor.
- d. Claim for Excess Compensation. Payment in excess of the limitation set forth at subparagraph c above may be made to provide fair compensation in those cases requiring extended or complex representation when so certified by the verifying officer and approved by the Chief Judge of the United States Court of Appeals for the Circuit in the district which designated the verifying officer. Counsel and guardians ad litem claiming in excess of the statutory maximum shall submit with the voucher a detailed memorandum supporting and justifying the claim that the representation given was in an extended or complex case and that the excess payment is necessary to provide fair compensation.
- e. Expenses. Reasonably incurred out-of-pocket expenses, such as for travel, meals, and lodging, may be claimed and must be itemized and reasonably documented. Receipts for airline tickets or for other methods of transportation, lodging (regardless of the amount) and other items of subsistence in excess of \$25, except for meals, must be submitted to obtain reimbursement. Expenses attributable to general office overhead and the cost of items of a personal nature purchased for or on behalf of the person represented are not reimbursable.
- f. Submission for Payment. Upon approval by the verifying officer and, if required, by the Chief Judge of a United States Court of Appeals, the verifying officer will forward the claim to the Bureau of Consular Affairs, Department of State, Washington, D. C. 20520, for payment.

- g. Travel Advances. Travel advances for private panel attorneys serving as counsel or guardian ad litem are available from the Department of State pursuant to section 4109(a)(2) of title 18, United States Code. In order to obtain an advance, the verifying officer must send a letter detailing the point of departure, the destination and the duration of the stay, along with a copy of the appointment order, to the Bureau of Consular Affairs, Department of State, Washington, D.C. 20520. The advance will be sent directly to the attorney or guardian ad litem by the Department of State.